

1
2
3
4
5

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 || THOMAS SPEAR, *et al.*,

11 | Plaintiffs,

12 | v.

13 CITY OF NORTH LAS VEGAS, *et al.*,

14 Defendants.

Case No. 2:06-CV-00264-KJD-LRL

ORDER

Presently before the Court is Defendants' Motion for Summary Judgment (#49). Plaintiffs filed an Opposition (#67), to which Defendants filed a Reply (#70).

18 || I. Facts and Procedural History

19 On March 3, 2004, Sean Spear placed an emergency 911 call to the North Las Vegas Police
20 Department (“NLVPD”). He informed the dispatcher that his father, Thomas Spear (“Thomas” or
21 “Plaintiff”), was in their home located at 1002 White Hollow Avenue and was threatening to shoot
22 himself in the head. He also told the dispatcher that his father was currently in possession of a 9mm
23 handgun. Sean had previously called a friend who was an officer with the North Las Vegas Police
24 Department for help.

At approximately 4:25 p.m. officers Jennifer Hurley and Carey McCloud were dispatched to the Spear home. After the police arrived, Sean informed them that in addition to the handgun there

1 were at least four rifles and four handguns with armor piercing ammunition in the house. He told
2 them that his father was a retired Air Force officer with extensive military and weapons training.

3 Sean also told the officers that the prior evening his father, Thomas Spear, and mother, Linda
4 Spear, became involved in a dispute over missing medication. Linda Spear left the home that
5 evening and had not returned. The next day Sean checked on his father and found him sitting on his
6 bed holding a handgun. Sean told the officers that his father had said that he no longer wished to live
7 and promised Sean his automobile collection if Sean let him commit suicide. Sean became
8 frightened and ran outside to call the police.

9 Officer Hurley then attempted to call Thomas Spear on the house phone which rang without
10 being answered. Hurley contacted NLVPD Sergeant Michael Waller to advise him of the situation.
11 Waller advised the officers to close off the street and monitor the house. Waller arrived at 5:10 p.m.
12 Sean repeated what he had told the other officers and gave the police a layout of the interior of the
13 Spear home.

14 At approximately 5:30 p.m., Defendants Captain Joe Chronister and Captain Tony Scott
15 arrived at the command post to monitor the situation. Waller briefed them on the situation. At 6:20
16 p.m., crisis negotiators, Susan Shaaf-White, Terrence McAllister, and Randy Carter arrived at the
17 scene. The negotiators attempted to gather employment and medical history from Nellis Air Force
18 Base. At 6:30 p.m., Waller called out the Special Weapons and Tactic ("SWAT") squad. The
19 command post was informed that neighbors had called Linda Spear. The neighbors reported that
20 Thomas had spoken with Linda within the half hour and informed her that he had taken an overdose
21 of medication.

22 At 6:55 p.m., Special Operations and SWAT arrived on the scene. They set up a perimeter
23 around the residence, treating the situation as a barricaded subject. Special Operations was briefed
24 on the background of the situation. Michael Kincaid, the SWAT commander, was concerned that
25 Thomas would open fire causing the police officers to shoot him, or that he was trying to kill himself
26 with an overdose of medication.

1 Linda Spear was intercepted by police at a nearby intersection as she tried to return home.
2 Military personnel from Nellis Air Force Base's Office of Special Investigations were also
3 intercepted and taken to the command post. Linda was not allowed to go to the command post, and
4 she returned to her hotel room at the Cannery Hotel. At approximately 7:40 Linda and her daughter,
5 Kristy Lynn Grider were met at their hotel room by Officer Bruce Reeves who asked them not to
6 leave for their own safety.

7 Rifle teams were deployed on the front and rear of the residence. The team in the rear set up
8 in a second story window of a house across the street from the back of the Spear residence. An
9 immediate action team set up in the front yard to secure Thomas if he left the house. The street light
10 in front of the house was disabled in order to conceal their location. At approximately, 8:00 p.m.,
11 these teams were in ready position.

12 Between 8:00 and 8:30 p.m., crisis negotiators made numerous attempts to telephone Thomas
13 Spear, with no answer, except for the answering machine. Officer's also attempted to use Linda
14 Spear's cell phone in case Thomas was using caller ID to screen calls. At 8:35 p.m., Special
15 Operations attempted to speak with Thomas via bullhorn. They asked Thomas to answer his phone
16 but he did not respond or answer. Sean, down the street at the command post, did not hear the
17 attempt to communicate with his father by bullhorn.

18 Around the same time, Officer Brown, with the rifle team in the rear, saw Thomas lying
19 prone by the rear sliding glass door. Brown could see Thomas when he moved or sat up, but when
20 he lay completely prone he was out of sight. Brown reported that he could hear the bullhorn from his
21 position in the house across the street from the rear of the Spear home.

22 In addition to her cell phone, Linda had given officers a key to the house. However, because
23 Thomas was visible through the glass in the rear of the house and he was not responding to officers,
24 Kincaid determined that entry through the front door would not ensure protection for the officers or
25 Thomas.

26

1 In order to get a better look, Officers Taylor and Ryan were deployed on ladders overlooking
2 the rear wall into the backyard. Though they could see Thomas lying on the floor near the sliding
3 glass door, they could not see his hands. Though some lights were on in the house, no lights were on
4 in the room Thomas was in.

5 At about 9:20, a second immediate action team, including Defendant Christopher Corrado
6 and Defendant Travis Snyder, was deployed in the rear, northwest corner of th residence, about 15
7 yards from the rear sliding glass door. At approximately 9:30 p.m., Taylor fired a “KO1” less lethal
8 munition at the top of the sliding glass door which broke the tempered glass of the door. A stinger
9 ball distraction device was placed approximately ten feet from the door to distract Thomas from the
10 immediate action team. Corrado and Snyder had to manually clear the remaining glass from the
11 door, and shouted instructions at Thomas while they did it.

12 Thomas Spear sat up and asked, “What’s going on?” He was grabbed by the immediate
13 action team, dropped in the glass, and slammed up against the spa in the backyard. Thomas hit his
14 head on the spa. Thomas suffered a severe laceration to his buttocks and was attended to by medical
15 personnel. Eventually, Thomas underwent surgery at Nellis Air Force Base to repair the damage.

16 Plaintiffs filed the present action on March 2, 2006. Plaintiffs allege violations of the Fourth,
17 Fifth and Fourteenth Amendments including a claim for violation of Plaintiffs’ rights to familial
18 relationships. They also allege municipal liability under 42 U.S.C. § 1983 asserting that it is the
19 policy, practice and custom of the NLVPD to tolerate and ratify the excessive use of force by its
20 officers and to negligently hire, train and supervise its officers. Plaintiffs also allege state law claims
21 for intentional infliction of emotional distress, assault and battery, and false imprisonment.

22 After many extensions of deadlines to file dispositive motions and oppose Defendants’
23 motion for summary judgment, the Court denied further extensions. Plaintiffs filed their opposition
24 on January 5, 2010. In their opposition, Plaintiffs included the report of D.P. Van Blaricom.
25 However, the deadline for designation of expert witnesses was May 26, 2009 and the deadline for
26 designation of rebuttal expert witnesses was June 25, 2009. Van Blaricom’s report was never

1 produced to Defendants, other than being attached to their opposition. It appears that Van Blaricom
2 was not retained until December 30, 2009, five months after discovery closed on July 27, 2009. Van
3 Blaricom's report will be excluded, because it is unauthenticated, lacks foundation, and as a sanction
4 under Federal Rule of Civil Procedure 37 (c)(1) for Plaintiffs' failure to timely disclose the expert
5 under Federal Rule of Civil Procedure 26.

6 **II. Summary Judgment Standard**

7 Summary judgment may be granted if the pleadings, depositions, answers to interrogatories,
8 and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any
9 material fact and that the moving party is entitled to a judgment as a matter of law. See Fed. R. Civ.
10 P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the
11 initial burden of showing the absence of a genuine issue of material fact. See Celotex, 477 U.S. at
12 323. The burden then shifts to the nonmoving party to set forth specific facts demonstrating a
13 genuine factual issue for trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
14 587 (1986); Fed. R. Civ. P. 56(e).

15 All justifiable inferences must be viewed in the light most favorable to the nonmoving party.
16 See Matsushita, 475 U.S. at 587. However, the nonmoving party may not rest upon the mere
17 allegations or denials of his or her pleadings, but he or she must produce specific facts, by affidavit
18 or other evidentiary materials as provided by Rule 56(e), showing there is a genuine issue for trial.
19 See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The court need only resolve factual
20 issues of controversy in favor of the non-moving party where the facts specifically averred by that
21 party contradict facts specifically averred by the movant. See Lujan v. Nat'l Wildlife Fed'n., 497
22 U.S. 871, 888 (1990); see also Anheuser-Busch, Inc. v. Natural Beverage Distrib., 69 F.3d 337, 345
23 (9th Cir. 1995) (stating that conclusory or speculative testimony is insufficient to raise a genuine
24 issue of fact to defeat summary judgment). Evidence must be concrete and cannot rely on "mere
25 speculation, conjecture, or fantasy. O.S.C. Corp. v. Apple Computer, Inc., 792 F.2d 1464, 1467 (9th
26 Cir. 1986). "[U]ncorroborated and self-serving testimony," without more, will not create a "genuine

1 issue" of material fact precluding summary judgment. Villiarimo v. Aloha Island Air Inc., 281 F.3d
 2 1054, 1061 (9th Cir. 2002).

3 Summary judgment shall be entered "against a party who fails to make a showing sufficient
 4 to establish the existence of an element essential to that party's case, and on which that party will
 5 bear the burden of proof at trial." Celotex, 477 U.S. at 322. Summary judgment shall not be granted
 6 if a reasonable jury could return a verdict for the nonmoving party. See Anderson, 477 U.S. at 248.

7 **III. Qualified Immunity**

8 Defendants aver that qualified immunity bars Plaintiffs' allegations of Constitutional
 9 deprivations. However, because there is a genuine issue of material fact as to Defendants' culpability
 10 for Spear's alleged head injury and for being dropped in the glass, the Court denies summary
 11 judgment regarding those specific claims only.

12 When the qualified immunity is raised, the Court first determines whether, taken in the light
 13 most favorable to the plaintiff, the conduct of an officer violated plaintiffs' Constitutional rights.
 14 Saucier v. Katz, 533 U.S. 194, 201 (2001); see also Pearson v. Callahan, ____ U.S. ___, 129 S.Ct.
 15 808, 815 (2009) (noting that the exact sequence of analysis proscribed by Katz v. Saucier is often
 16 beneficial, though not required). If the plaintiff cannot establish a Constitutional violation, then there
 17 is no reason for further discussion. Katz v. Saucier, 533 U.S. at 201. However, if a plaintiff
 18 establishes a violation, the Court then determines whether the right was clearly established.

19 **A. Constitutional Violations**

20 **1. Excessive Force**

21 The Court examines allegations of excessive force under the interpretation of the Fourth
 22 Amendment's prohibition on unreasonable seizures. Bryan v. MacPherson, 608 F.3d 614, 619-20
 23 (9th Cir. 2010). Under this framework, the Court determines the reasonableness of the force
 24 employed by police officers by balancing "the nature and quality of the intrusion on the individual's
 25 Fourth Amendment interests against the countervailing governmental interests at stake." Id.

26

1 (quoting Graham v. Connor, 490 U.S. 386, 396 (1989)) (internal quotations omitted); see also,
2 Deorle v. Rutherford, 272 F.3d 1272, 1279 (9th Cir. 2001).

3 i. Nature and Quality of the Intrusion

4 To determine the nature and quality of the intrusion, the Court first makes an
5 assessment as to the quantum of force employed by Defendants against Plaintiff. Chew v. Gates, 27
6 F.3d 1432, 1441 (9th Cir. 1994); Bryan, 608 F.3d at 620. Other than being dragged through the glass
7 and slammed against the spa, the Court finds that Plaintiff's allegations of excessive force fail as a
8 matter of law.

9 First, all other actions complained of involve a low quantum of force. That conduct
10 was gentle in comparison with the conduct in cases concluding that there was excessive force. See,
11 e.g. Bryan, 608 F.3d 614 (plaintiff shot with a taser); Deorle v. Rutherford, 272 F.3d 1272 (9th Cir.
12 2001) (shot from a non-lethal weapon removed plaintiff's eye and lodged lead in his skull).
13 Furthermore, the evidence demonstrating those acts does not give rise to a § 1983 claim because it
14 merely shows, if anything, a lack of due care on the part of the officers. Davidson v. Cannon, 474
15 U.S. 344 (1986). Negligent conduct on the part of state actors does not give rise to a § 1983 claim.
16 Maddox v. City of Los Angeles, 792 F.2d 1408, 1413 (9th Cir. 1986); see also, Wood v. Ostrander,
17 879 F.2d 583, 588 (9th Cir. 1989) (noting that recovery for negligence does not serve to discourage
18 abuses of power by state officials).

19 To recover for unintentional acts, a state actor's conduct must at least rise to
20 "deliberate indifference." Wood, 879 F.2d at 588. The deliberate indifference standard is a *higher*
21 degree of culpability than mere negligence, gross negligence, or recklessness. Redman v. County of
22 San Diego, 896 F.2d 362, 365 (9th Cir. 1990). Thus, accepting all of Plaintiffs' alleged facts as true,
23 no reasonable jury could conclude that the police were guilty of deliberate indifference except when
24 they dropped and dragged Plaintiff through the glass and slammed him against the spa. Accordingly,
25 the Court concludes that Plaintiff has not stated an excessive force claim for any other injuries he
26 received.

1 However, a genuine issue of material fact remains as to whether officers acted with
2 deliberate indifference when they dragged Plaintiff through the glass and sat Plaintiff next to the spa,
3 allegedly causing injury to Plaintiff's head. If in doing so, the police acted with deliberate
4 indifference, then Plaintiff may have a claim under § 1983. However, if it was mere negligence, or
5 even gross negligence, Plaintiff cannot recover because such evidence does not give rise to a § 1983
6 claim. See Maddox v. City of Los Angeles, 792 F.2d 1408, 1413 (9th Cir. 1986); see also, Wood v.
7 Ostrander, 879 F.2d 583, 588 (9th Cir. 1989). What level of force was used and whether it was
8 reasonable are questions for a finder of fact.

9 ii. Countervailing Governmental Interest

10 To evaluate the government's interest in using force, the Court assesses "the severity
11 of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or
12 others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Graham v.
13 Connor, 490 U.S. at 396. The second factor regarding the safety of officers or others is the most
14 important. Smith v. City of Hemet, 394 F.3d 689, 702 (9th Cir. 2005). There must be objective
15 factors that suggest that there is a threat to a person's safety. "[A] simple statement by an officer that
16 he fears for his safety or the safety of others is not enough; there must be objective factors to justify
17 such a concern." Deorle v. Rutherford, 272 F.3d 1272, 1281 (9th Cir. 2001). However, the Court is
18 not limited to a review of these factors. The Court can also consider the "totality of the
19 circumstances" and any specific factors that may be appropriate in this case in determining the
20 government's interest in the use of force. Bryan v. MacPherson, 608 F.3d 614, 622 (9th Cir. 2010).

21 Here, given the totality of the circumstances, and the threat of harm that Spear posed
22 to himself and to those around him, the government had a high interest in removing Plaintiff from the
23 home. See Deorle v. Rutherford, 272 F.3d at 1281; Bryan v. MacPherson, 608 F.3d at 622. The
24 police had ample, objective evidence regarding the potential threat to the safety of Spear and others.
25 See Graham v. Connor, 490 U.S. at 396. For example, NLVPD had visited the residence the
26 previous day for a domestic dispute. Plaintiff's son, Sean, called 911 and asked for the police's help

1 to prevent Plaintiff's suicide. When police arrived, Sean told police that Plaintiff had several guns,
2 including armor-piercing ammunition. Spear was unresponsive to police and negotiators. These
3 facts strongly suggest that Plaintiff was a potential harm to himself and to those around him.
4 Therefore, the government had a high interest in removing Plaintiff from the home.

5 Furthermore, the totality of circumstances demonstrate that Defendants had a high
6 interest in removing Plaintiff from his home. See Bryan, 608 F.3d at 622. Defendants were asked to
7 respond to a potentially dangerous situation, involving a suicidal man who owned several guns.

8 In balancing the government's interest with the nature and quality of the intrusion, the
9 Court finds that Defendants' actions in detaining Thomas reasonable in the circumstances. However,
10 there is a genuine issue of material fact as to the use of force in dragging Plaintiff through the glass
11 and slamming him against the spa. Therefore, summary judgment is denied on this specific claim for
12 Thomas's injuries.

13 **2. Unlawful Entry**

14 The Court concludes that Defendants did not make an unlawful entry into Plaintiffs' home.
15 Although police entry into a home without a warrant is typically unlawful, Brigham City, Utah v.
16 Stuart, 547 U.S. 398 (2006), this rule is subject to an exception that allows entry in emergency
17 situations. “[A] warrantless entry by criminal law enforcement officials may be legal when there is
18 compelling need for official action and no time to secure a warrant.” For example, “The need to
19 protect or preserve life or avoid serious injury is justification for what would be otherwise illegal
20 absent an exigency or emergency.” Mincey v. Arizona, 437 U.S. 385, 392 (1987) (quoting Wayne v.
21 U.S. 318 F.2d 205 (D.C. Cir. 1963)). As part of the police’s “community caretaking function,” this
22 exception allows police to respond without a warrant to an emergency situation that threatens life or
23 limb. Hopkins v. Bonvicino, 573 F.3d 752, 763 (9th Cir. 2009).

24 Here, the police entered Plaintiff Spear's home during an emergency situation. There was a
25 compelling need for action. The Court finds that the police were acting within their community
26 caretaker function when they responded to Sean Spears's request for help in preventing Plaintiff's

1 suicide. Because police entered the home during an emergency situation to protect life or limb, the
 2 Court finds that there was no unlawful entry in this case. See Hopkins, 573 F.3d at 763. Therefore,
 3 the Court finds that this claim fails as a matter of law.

4 **B. Clearly Established Right**

5 The Court finds that all of Plaintiffs' allegations are barred by Defendants' qualified
 6 immunity, except for Spear being dragged through the glass and slammed against the spa. Qualified
 7 immunity "protects government officials from liability for civil damages insofar as their conduct
 8 does not violate clearly established statutory or constitutional rights of which a reasonable person
 9 would have known." Pearson v. Callahan, ___ U.S. ___, 129 S.Ct. 808, 815 (2009) (quoting Harlow
 10 v. Fitzgerald, 457 U.S. 800, 818 (1982)) (internal quotations omitted).

11 Because there is a genuine issue of material fact regarding whether officers deliberately
 12 dragged Thomas through glass and roughly placed him up against the spa, causing injury to his head,
 13 the Court denies summary judgment with respect to that claim. This use of force, accepting the
 14 allegation as true, would constitute a violation of a clearly established right. Therefore, qualified
 15 immunity does not bar Spear's claims against police for that alleged use of force. The Court,
 16 however, grants summary judgment regarding Plaintiff's other allegations of excessive force and for
 17 unlawful entry.

18 **IV. Municipal Liability**

19 Plaintiff's 42 U.S.C. § 1983 claims against the City of North Las Vegas and the North Las
 20 Vegas Police Department (NLVPD) fail as a matter of law. Section 1983 provides,

21 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any
 22 State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen
 23 of the United States or other person within the jurisdiction thereof to the deprivation of any
 24 rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the
 25 party injured in an action at law, suit in equity, or other proper proceeding for redress...

26 Municipalities and other local government units are included in that group of "persons" referred to in
 27 § 1983. Monell v. Dep't of Soc. Servs. of New York, 436 U.S. 658, 690 (1978). A plaintiff may
 28 establish municipal liability under §1983 by demonstrating one of the following three factors: 1) a

1 city employee violated Constitutional rights either pursuant to an official policy or informal practice
 2 of the city, 2) the violator held final policy-making authority, or 3) a person with final policy-making
 3 authority ratified the unconstitutional behavior. Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir.
 4 1992).

5 **A. Violation Pursuant to an Official or Unofficial Policy**

6 i. An Official Policy

7 Plaintiff fails to establish that a NLVPD employee violated his Constitutional rights
 8 “pursuant to official municipal policy.” Monell, 436 U.S. at 691. “Congress did not intend
 9 municipalities to be held liable unless action pursuant to official municipal policy of some nature
 10 caused a constitutional tort.” Id. Therefore, “a municipality cannot be held liable solely because it
 11 employs a tortfeasor-or, in other words, a municipality cannot be held liable under § 1983 on a
 12 *respondeat superior* theory.” Id. The official-policy requirement for municipal liability under §
 13 1983 distinguishes the acts of municipal employees from the acts of the municipality, thus
 14 determining whether the city is actually responsible for the violation. Pembaur v. City of Cincinnati,
 15 475 U.S. 469, 479 (1986). Therefore, a “governmental entity is liable under §1983 only when the
 16 entity itself is a “ ‘moving force’ ” behind the deprivation.” Kentucky v. Graham, 473 U.S. 159, 166
 17 (1985) (citations omitted).

18 Plaintiff has not raised a genuine issue of material fact regarding an official NLVPD
 19 policy that allows or encourages excessive force such as the alleged head injury here. Even if the
 20 jury determines that the police acted with deliberate indifference when Spear’s head was allegedly
 21 injured, this evidence is wholly insufficient to establish municipal liability. To prevail on such a
 22 claim, Plaintiff would also need to establish that the police officer did so pursuant to official policy.
 23 Plaintiff has failed to do so here.

24 ii. Unofficial Policy: Widespread Practice or Custom

25 Even if a plaintiff cannot establish the existence of an official municipal policy, the
 26 plaintiff may also establish municipal liability by demonstrating that the municipal employee acted in

1 accordance with a “longstanding practice or custom which constitutes the ‘standard operating
2 procedure’ of the local governmental entity.” Jett v. Dallas Independent School District, 491 U.S.
3 701, 737 (1989) (quoting Pembaur, 475 U.S. at 485-87 (White, J., concurring)). “[A] plaintiff may
4 be able to prove the existence of a widespread practice that, although not authorized by written law
5 or express municipal policy, is “so permanent and well settled as to constitute a ‘custom or usage’
6 with the force of law.” City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (citing Adickes v.
7 S.H. Kress & Co., 398 U.S. 144, 167-68, 90 (1970)). Therefore, “A plaintiff cannot prove the
8 existence of a municipal policy or custom based solely on the occurrence of a single incident or
9 unconstitutional action by a non-policymaking employee.” Davis v. City of Ellensburg, 869 F.2d
10 1230, 1233 (9th Cir. 1989) (abrogated on other grounds by Beck v. City of Upland, 527 F.3d 853
11 (9th Cir. 2008)).

12 Here, the evidence is insufficient to establish that NLVPD maintained an
13 unconstitutional “longstanding practice or custom which constitutes the ‘standard operating
14 procedure’ of the local governmental entity.” Jett, 491 U.S. at 737 (quoting Pembaur, 475 U.S. at
15 485-87 (White, J., concurring)). The evidence presented by Plaintiff fails to show that the alleged
16 unconstitutional conduct in this case was so widespread that it constituted a custom with the force of
17 law at the NLVPD. See City of St. Louis, 485 U.S. at 127. Likewise, Plaintiff’s evidence supporting
18 this isolated incident fails to establish a pattern of tortious conduct that resulted from inadequate
19 training on the part of NLVPD. Even assuming that a NLVPD officer is liable for the alleged
20 excessive force used against Plaintiff Spear, this is insufficient evidentiary foundation for municipal
21 liability because evidence demonstrating an occurrence of a single incident of unconstitutional
22 behavior fails to establish a municipal policy or custom. See Davis, 869 F.2d at 1233.

23 **B. Policy-Making Authority**

24 Plaintiff failed to establish that a NLVPD employee with policy-making authority used
25 excessive force against him. A litigant wishing to oppose a summary judgment motion must
26 demonstrate *specific* facts that show there is a genuine issue of material fact. Fed. R. Civ. P.

1 56(e)(2). Plaintiff failed to establish that the alleged tortfeasor held policy-making authority. Thus,
 2 Plaintiff has not established municipal liability based upon this element.

3 **C. A Person with Policy-Making Authority Ratified the Unconstitutional Behavior**

4 Plaintiff fails to demonstrate that an employee with policy-making authority ratified the
 5 alleged police conduct that caused Plaintiff's head injury. See Davis v. City of Ellensburg, 869 F.2d
 6 1230, 1234 (9th Cir. 1989) (denying municipal liability where the plaintiff failed to present evidence
 7 that the city acquiesced in unconstitutional behavior). Police officers may have stated that the plan to
 8 extract Plaintiff from his home was proper, but they did not ratify or condone the alleged
 9 unconstitutional behavior. "If the evidence is merely colorable, or is not significantly probative,
 10 summary judgment may be granted." Davis, 869 F.2d at 1234 (quoting Anderson v. Liberty Lobby,
 11 Inc., 477 U.S. 242, 249-50 (1986) (citations omitted)). Because the evidence in the record does not
 12 raise a genuine issue of material fact regarding a ratification of unconstitutional conduct at NLVPD,
 13 the Court grants summary judgment on this claim against NLVPD.

14 **V. Interference with Familial Relationship**

15 Defendants are entitled to qualified immunity on Plaintiffs' claim for interference with
 16 familial relationship, because no clearly established law would have put Defendants on notice under
 17 the facts of this case that their actions were illegal. In opposition to Defendants' motion for summary
 18 judgment, Plaintiffs have failed to identify a single fact demonstrating that Defendants were
 19 deliberately indifferent to their right to a familial relationship. Wallis v. Spencer, 202 F.3d 1126 (9th
 20 Cir. 2000). Accordingly, Plaintiffs' third cause of action is dismissed.

21 **VI. Discretionary Immunity Pursuant to State Law**

22 Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007) adopted the general principles
 23 of federal jurisprudence as to discretionary-function immunity, id. at 727, holding that the actions of
 24 state actors are entitled to discretionary-act immunity if their decision (1) involves an element of
 25 individual judgment or choice and (2) is based on considerations of social, economic, or political
 26 policy, id. at 729. The Nevada Supreme Court clarified that "decisions at all levels of government,

1 including frequent or routine decisions, may be protected by discretionary-act immunity, if the
2 decisions require analysis of government policy concerns.” Id.

3 To the extent that any of Plaintiffs’ claims could be construed as negligent training or
4 supervision claims under state law, Defendants are entitled to discretionary immunity as the Ninth
5 Circuit has held “decisions relating to the hiring, training and supervision of employees usually
6 involve policy judgment of the type Congress intended the discretionary function exception to
7 shield.” Vickers v. United States, 228 F.3d 944, 950 (9th Cir. 2000); Bryan v. Las Vegas Metro.
8 Police Dept’t, 349 Fed. Appx. 132, 134 (9th Cir. 2009). The individual defendants are also
9 protected under Nev. Rev. Stat. § 41.032 from the state law torts, because their handling of the
10 situation with Thomas Spear led to discretionary decisions that “were concerning the scope and
11 manner in which [North Las Vegas Police Department] conducts an investigation,” or responds to an
12 emergency call based on the policies of North Las Vegas Police, and did not “violate a mandatory
13 directive.” Vickers, 228 F.3d at 951; Bryan, 349 Fed. Appx. at 134. Accordingly, Plaintiffs state law
14 claims are dismissed.

15 **VII. Conclusion**

16 Accordingly, **IT IS HEREBY ORDERED** that Defendants’ Motion for Summary Judgment
17 (#49) is **GRANTED in part and DENIED in part**;

18 **IT IS FURTHER ORDERED** that all Plaintiffs’ claims except Thomas Spears’ claims for
19 excessive force are **DISMISSED**.

20 DATED this 30th day of September 2010.

22 
23

24 _____
25 Kent J. Dawson
26 United States District Judge